

STATE OF NEW YORK
SUPREME COURT

COUNTY OF SENECA

In the Matter of the Application for a Judgment
Pursuant to Article 78 of the Civil Practice Law
and Rules of:

WATERLOO CONTRACTORS, INC.

Petitioner

v.

TOWN OF SENECA FALLS TOWN BOARD and TOWN
OF SENECA FALLS TOWN CLERK

Respondents

**AFFIRMATION IN
SUPPORT OF
VERIFIED PETITION**

Index No.:

51182

Hon.

SENECA COUNTY
CLERK'S OFFICE

2017 JUN - 7 A 9:22

Douglas H. Zamelis, Esq., an attorney in good standing duly admitted to practice before all Courts of the State of New York affirms under penalties of perjury the following is true:

1. I maintain my office for the practice of law at 7629A State Highway 890, Cooperstown, New York, I am counsel for petitioner Waterloo Contractors, Inc. ("Petitioner"), I am fully familiar with the facts and circumstances of this proceeding, and I respectfully submit this affirmation in support of Petitioner's Verified Petition.
2. I attended the March 29, 2017 public hearing at which numerous members of the public testified extensively as to the ongoing adverse environmental impacts from solid waste disposal activities in the town, including a terrible and regular odor, increased truck traffic, impacts to nearby historic sites, and a reduction in community character and pride.
3. I remember distinctly listening on March 29, 2017 to the poignant testimony of a young mother that she had recently wanted to go out and shoot baskets with her daughter in their

Received June 7, 2017
at 9:52 o'clock (A.M.) P.M.
Nicolaetta G. Green
Town Clerk

driveway but couldn't because of the terrible odor that invaded her property and her quality of life.

4. I also recall hearing on March 29, 2017 the testimony of a man who recounted how he had recently walked out of Wal-Mart with his family and gagged because of the terrible odor from solid waste disposal activities in the town.
5. The public hearing on March 29, 2017 went late into the evening with numerous members of the community testifying to the ongoing odor, truck traffic and other adverse environmental impacts from solid waste disposal activities in the town.
6. I frequently come to Seneca Falls and am always shocked at how bad the odor from solid waste disposal activities in the town is, and my eyes often water and I gag even when driving through Seneca Falls in the winter with my car windows rolled up.
7. On April 4, 2017, I arranged for hand delivery of correspondence to the Town Board identifying several areas of adverse environmental impacts that would result from the adoption of Local Law #2 of 2017 and the repeal of Local Law #3 of 2016, and requesting that the Town Board identify these areas of environmental concern and take a "hard look" at each area of environmental concern.
8. On April 4, 2017 at 11:50 a.m. I sent an email to Town Clerk Greer requesting copies of records scheduled to be discussed at the Town Board meeting that evening pursuant to Section 103(e) of the Open Meetings Law. In that email, I pasted the actual language Section 103(e) and provided a link to *Ballard v. New York Safety Track LLC* 126 A.D.3d 1073, 1077 (3rd Dept. 2015) wherein the Appellate Division upheld the award of attorney's fees to the petitioners after holding:

Furthermore, despite the Town respondents' insistence that the Town was not obliged or that it was not feasible to make available to petitioners the proposed 2013 agreement before it was put to a vote, we affirm that part of Supreme Court's judgment as found that the Town's conduct in that regard denied petitioners "any meaningful participation" in the process leading to the final adoption of the controversial 2013 agreement, in clear contravention of Public Officers Law § 103(e).

9. When I arrived at Town Hall at approximately 6:50 p.m. that evening I approached Town Clerk Greer and asked for copies of records scheduled to be discussed at the meeting.
10. She responded with words to the effect of "I didn't get your email" to which I responded with words to the effect of "I submitted a written request pursuant to Section 103(e) of the Open Meetings Law".
11. She advised that I should have called her office during the day to follow up on my email and suggested that I call her office in the future to confirm she has received any request.
12. I was never provided with any of the records that were discussed by the Town Board at its meeting on April 4, 2017, despite my written request and the practicability of providing copies at or prior to the meeting.
13. On May 5, 2017 at 1:37 p.m. I sent an email to Supervisor Lazzarro and each member of the Town Board, with a copy to Town Clerk Nicoletta Greer.
14. In that email, I submitted correspondence dated May 5, 2017 to the Town Board reemphasizing the adverse environmental impacts from the adoption of proposed Local Law #2 of 2017, pointed out the 10 places in the Town of Seneca Falls listed on the state and national registers of historic places, and included Exhibits "A" and "B" which were shocking graphics obtained from the New York State Department of Environmental

Conservation pursuant to a Freedom of Information Law Request showing over 1,500 odor complaints resulting from solid waste disposal activities in the town from March of 2016 to March of 2017, and maps showing the widespread geographic distribution and location of odor complaints resulting from solid waste disposal activities in the town, respectively.

15. My May 5, 2017 email to Supervisor Lazzarro, each Town Board member, and the Town Clerk also included the following request:

Pursuant to Open Meetings Law Section 103(e) written request is hereby made that at or before the meeting I be provided with a copy of all records scheduled to be discussed tonight at the Seneca Falls Town Board meeting concerning proposed Local Law #2 and the review of same pursuant to the State Environmental Quality Review Act.

16. I did not receive any return message indicating my May 5, 2017 email had not been received by all recipients, but because I had submitted a similar request prior to the April 4, 2017 Town Board meeting and was told by Town Clerk Greer that she didn't get my email and next time I should call to let her know I sent her an email, I telephoned Town Clerk Greer's office at approximately 3:35 on May 5, 2017.
17. Town Clerk Greer was unavailable when I called so I left a message with the Deputy Town Clerk that I wanted to confirm with Town Clerk Greer that I had submitted a request pursuant to Open Meetings Law Section 103(e) for SEQRA documents scheduled to be discussed at the Town Board meeting that evening.
18. I received a voice mail on my cell phone at 3:42 which indicated Town Clerk Greer was going to print off copies of the letter and exhibits I had submitted to the Town Board and give them to me at or prior to the meeting.

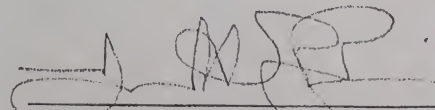
19. I immediately called Town Clerk Greer's office back and upon reaching her I indicated I didn't need her to give me copies of the records I had submitted, but rather that I was asking pursuant to Section 103(e) of the Open Meetings Law for copies of the SEQRA documents the Town Board was scheduled to discuss at the meeting that evening.
20. She indicated first that she hadn't been given anything, but then indicated "I will print them out for you".
21. I arrived at Town Hall at approximately 4:50 p.m. to a large police presence.
22. I laid a copy of my May 5 submission with Exhibits "A" and "B" on the table at each Town Board member's and Town Attorney's place and then politely approached Town Clerk Greer, who was sitting alone at the table at the time, and asked her for a copy of the SEQRA records scheduled to be discussed at the meeting as I had requested, and she told me first that "They didn't give me anything" and then after I persisted and stated that I was entitled to copies of records scheduled to be discussed as per Section 103(e) she told me that "Mr. Condino told me not to give you copies".
23. Not wanting to get into an argument with the Town Clerk, I then sat down in the front row.
24. Supervisor Lazzaro called the meeting to order and the Town Engineer, Mr. Condino of Barton & Loguidice, passed out to each member of the Town Board and the Town Attorney a package of documents that appeared to me to be SEQRA documents pertaining to proposed Local Law #2 of 2017.
25. In a hushed and respectful tone, I stated words to the effect of "Mr. Supervisor, I submitted a request ahead of time may I have a copy of the documents?"

26. Supervisor Lazzarro stated in response words to the effect of "I'm not going to provide them, you can have a copy after the meeting Mr. Zamelis."
27. I responded in as respectful tone as possible with words to the effect of "I'm entitled to get a copy at or before the meeting" to which Supervisor Lazzarro sternly responded with words to the effect of "On the advice of counsel I'm not going to provide you with copies until after the meeting".
28. I then stated words to the effect of "I'd like to reference for the record Section 103(e) of the Open Meetings Law" and refrained from further argument out of concern Supervisor Lazzarro would ask the police officers present to remove me from the meeting which would prevent me from observing the remainder of the meeting.
29. Supervisor Lazzarro then referenced the documents handed out by Town Engineer Condino which were comprised of a Short Environmental Assessment Form, a Resolution of Negative Declaration pursuant to SEQRA, and proposed Local Law #2 of 2017.
30. Without any discussion of the several significant adverse environmental impacts posed by the proposed adoption of Local Law #2 of 2017 as evidenced by the extensive oral and written testimony in the record, Supervisor Lazzarro moved adoption of the SEQRA Negative Declaration which was seconded by Town Board Member Ferrara and then approved by a vote of 3 to 2.
31. I do not recall the words "odor", "traffic", or "character of the community" being mentioned during the Town Board's purported and rushed SEQRA review, and I did not observe or hear the Town Board take any look, let alone a "hard look", at the numerous

adverse environmental impacts from the proposed adoption of Local Law #2 of 2017 as evidenced by the extensive oral and written testimony in the record before the Board.

32. The Supervisor then moved adoption of Local Law #2 of 2017 which was which was seconded by Town Board Member Ferrara and then approved by a vote of 3 to 2.
33. Supervisor Lazzaro moved to adjourn the meeting and immediately after the meeting was over, Town Engineer Condino, who to my knowledge had remained present throughout the Town Board meeting with an extra packet of the documents distributed to Town Board Members, walked over to me and handed me a copy of the Short Environmental Assessment Form, Negative Declaration and Local Law #2 of 2017, indicating that it was entirely feasible and practicable for the Town to have provided me with a copy of the records at or before the meeting as required by Open Meetings Law Section 103(e) and that the Town Board and/ or Town Clerk had purposefully withheld the records from me so my client and I could not meaningfully participate in the Town Board's proceedings that evening.

Affirmed: Springfield Center, New York
June 6, 2017


DOUGLAS H. ZAMELIS, ESQ.

STATE OF NEW YORK
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COUNTY OF SENECA

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**NOTICE OF VERIFIED
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Hon.

2017 JUN -7 A 9:22
SENECA COUNTY
CLERK'S OFFICE

TO: THE ABOVE NAMED RESPONDENTS:

PLEASE TAKE NOTICE that upon the annexed amended petition, verified on the 6th day of June, 2017, and the affirmation of Douglas H. Zamelis, Esq. affirmed the 6th day of June, 2017, the undersigned will make application to this Court at the Seneca County Courthouse, 48 West Williams Street, Waterloo, New York 13165, on the 27th day of June, 2017 at 10:00 a.m. in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order and judgment pursuant to CPLR Article 78 granting the following relief:

1. Annuling and vacating respondent Town of Seneca Falls Town Board's May 5, 2017 Negative Declaration issued pursuant to the State Environmental Quality Review Act in connection with Local Law #2 of 2017;
2. Directing respondent Town of Seneca Falls Town Board to issue a Positive Declaration and require the preparation of a Draft Environmental Impact Statement pursuant to the State Environmental Quality Review Act prior to considering adoption of Local Law #2 of 2017;
3. Annuling and vacating respondent Town of Seneca Falls Town Board's May 5, 2017 determination to adopt Local Law #2 of 2017 in violation of the State Environmental Quality Review Act and the Open Meetings Law;
4. Awarding petitioner Waterloo Contractors, Inc. its costs and reasonable attorney's fees in accordance with Public Officers Law Section 107(2) for respondents' pattern of violation of Open Meetings Law Section 103(e); and

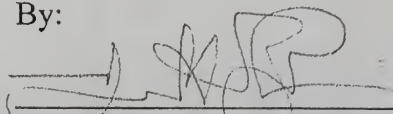
5. Granting such other and further relief as the Court may deem just, equitable and proper, including the costs and disbursements of this proceeding.

PLEASE TAKE FURTHER NOTICE, that Seneca County is designated as the venue of this proceeding on the basis that Seneca County is the County where the determinations complained of occurred and where the material events took place.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR § 7804(c), unless otherwise provided by an Order of this Court, respondents' verified answers, supporting affidavits, if any, and the certified transcript of the record of proceedings under consideration shall be served at least five (5) days before the above return date.

Dated: June 6, 2017
Springfield Center, New York

By:



Douglas H. Zamelis, Esq.
Attorney for Petitioners
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Cooperstown, New York 13326
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Fax: (315) 858-7111

Received June 7, 2017
at 9:58 o'clock (A.M.) P.M.
Nicolaletta J. Greer
Town Clerk